



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R04-OAR-2017-0546; FRL-9976-16-Region 4]**

#### **Air Plan Approval; MS; Section 128 Board Requirements for Infrastructure SIPs**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve the draft State Implementation Plan (SIP) submissions, submitted by the State of Mississippi, through the Mississippi Department of Environmental Quality (MDEQ) for parallel processing, on June 23, 2017, and February 2, 2018. Together these draft submittals address specific Clean Air Act (CAA or Act) requirements applicable to Mississippi state boards or bodies that approve CAA permits and enforcement orders. These submissions also request that EPA convert the previous partial disapproval of Mississippi's infrastructure SIPs related to the CAA state board significant portion of income requirements for the 2008 8-hour Ozone, 2008 Lead, 2010 Nitrogen Dioxide (NO<sub>2</sub>), 2010 Sulfur Dioxide (SO<sub>2</sub>), and 1997, 2006 and 2012 fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standards (NAAQS) to full approvals. Whenever EPA promulgates a new or revised NAAQS, the CAA requires the state to make a new SIP submission establishing that the existing SIP meets the various applicable requirements, or revising the SIP to meet those requirements. This type of SIP submission is commonly referred to as an "infrastructure" SIP. In this proposed action, EPA is proposing to approve the June 23, 2017, and February 2, 2018 submissions with respect to the CAA requirements applicable to state boards; and the related state board infrastructure SIP requirements for the 2008 8-hour Ozone, 2008 Lead, 2010 NO<sub>2</sub>,

2010 SO<sub>2</sub> and 1997, 2006 and 2012 PM<sub>2.5</sub>, NAAQS. If this proposed approval action is finalized, EPA will no longer be required to promulgate a Federal Implementation Plan (FIP) to address the CAA state board requirements for Mississippi, as described in more detail below.

**DATES:** Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2017-0546 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Nacosta C. Ward, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9140. Ms. Ward can be reached via electronic mail at [ward.nacosta@epa.gov](mailto:ward.nacosta@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. What is Parallel Processing?**

Consistent with EPA regulations found at 40 CFR part 51, Appendix V, section 2.3.1, for purposes of expediting review of a SIP submittal, parallel processing allows a state to submit a plan to EPA prior to actual adoption by the state. Generally, the state submits a copy of the proposed regulation or other revisions to EPA before conducting its public hearing. EPA reviews this proposed state action, and prepares a notice of proposed rulemaking. EPA's notice of proposed rulemaking is published in the Federal Register during the same time frame that the state is holding its public process. The state and EPA then provide for concurrent public comment periods on both the state action and Federal action.

If the revision that is finally adopted and submitted by the State is changed in aspects other than those identified in the proposed rulemaking on the parallel process submission, EPA will evaluate those changes and if necessary and appropriate, issue another notice of proposed rulemaking. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by the state and submitted formally to EPA for incorporation into the SIP.

On June 23, 2017, the State of Mississippi, through MDEQ, submitted a request for parallel processing of a draft SIP revision that the State has taken through public comment. On February 2, 2018, the State of Mississippi submitted an additional draft SIP revision that the State is taking through public comment. MDEQ requested parallel processing of both submissions so that EPA could begin to take action on its draft SIP revisions in advance of the State's submission of the final SIP revision. As stated above, the final rulemaking action by EPA will occur only after the SIP revisions have been: (1) adopted by Mississippi, (2) submitted formally to EPA for incorporation into the SIP; and (3) evaluated by EPA, including any changes

made by the State after the June 23, 2017, and February 2, 2018, draft submissions were submitted to EPA.

## **II. Background**

By statute, states are required to have SIPs that provide for the implementation, maintenance, and enforcement of the NAAQS. States are further required to make a SIP submission meeting the applicable requirements of sections 110(a)(1) and (2) within three years after EPA promulgates a new or revised NAAQS.<sup>1</sup> EPA has historically referred to this type of SIP submission as an “infrastructure SIP” submission. Sections 110(a)(1) and (2) require states to address basic SIP elements such as for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance with the newly established or revised NAAQS. More specifically, section 110(a)(1) provides the procedural and timing requirements for infrastructure SIP submissions. Section 110(a)(2) lists specific elements that states must meet for the “infrastructure” SIP requirements related to a newly established or revised NAAQS. The contents of an infrastructure SIP submission may vary depending upon the data and analytical tools available to the state, as well as the provisions already contained in the state’s existing EPA approved SIP at the time when the state develops and submits the infrastructure SIP submission for a new or revised NAAQS.

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<sup>1</sup> EPA has long noted that a literal reading of the statutory provisions of 110(a)(2) on the schedule provided in 110(a)(1) would create a conflict with the nonattainment provisions in part D of Title I of the CAA, which specifically address nonattainment area SIP requirements. See, e.g., “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),” Memorandum from Stephen D. Page, September 13, 2013 at 4. For example, section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. The provisions in section 172(b) for submission of such plans for nonattainment areas differs from the timing requirements for an infrastructure SIP submission under 110(a)(1). Thus, rather than applying all the stated requirements of section 110(a)(2) in a strict literal sense, EPA has determined that certain provisions like 110(a)(2)(I) of section 110(a)(2) are not applicable to infrastructure SIP submissions.

This action pertains to one of the requirements of section 110(a)(2) that is relevant in the context of a state's development, and EPA's evaluation of, infrastructure SIP submissions. Section 110(a)(2)(E)(ii) of the CAA requires states to have SIPs that contain provisions that comply with certain specific requirements respecting State boards or bodies or heads of states agencies under CAA section 128. Section 128 of the CAA requires that states include provisions in their SIP that require that any state board or body which approves permits or enforcement orders shall have a majority of members who represent the public interest and do not receive a significant portion of their income from parties subject to such permits or enforcement orders (section 128(a)(1)); and require that the members of any such board or body, or the head of an executive agency with similar power to approve permits or enforcement orders under the CAA, shall adequately disclose potential conflicts of interest (section 128(a)(2)). Specifically, this action is limited to specific section 128 requirements applicable to state boards or bodies.

On October 11, 2012, MDEQ submitted SIP revisions for incorporation of Article 4, Section 109 of the Mississippi Constitution and portions of Mississippi Code sections 25-4-25, -27, -29, -103, -105, and -109 into its SIP to meet its section 128 and related section 110(a)(2)(E)(ii) obligations for the 1997 and 2006 PM<sub>2.5</sub> NAAQS. On April 8, 2013, EPA took final action to incorporate these provisions into the Mississippi SIP to meet the certain requirements of CAA sections 128 and 110(a)(2)(E)(ii). *See* 78 FR 20793.<sup>2</sup> In this same final action, EPA disapproved Mississippi's October 11, 2012, submission as not satisfying the significant portion of income requirement of section 128(a)(1).

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<sup>2</sup> This final action pertained to Mississippi's October 11, 2012, infrastructure SIP submission and only addressed compliance with 110(a)(2)(E)(ii) respecting CAA section 128 requirements.

Subsequently, EPA took final action to disapprove Mississippi's infrastructure SIP submissions pertaining to section 110(a)(2)(E)(ii) for failing to comply with the significant portion of income requirement of section 128(a)(1) of for the 2008 8-hour Ozone on March 2, 2015 (80 FR 11133), 2008 Lead on March 30, 2015 (80 FR 16566), 2010 NO<sub>2</sub> on August 16, 2016 (81 FR 63705), 2010 SO<sub>2</sub> on September 30, 2016 (81 FR 67171), and 2012 PM<sub>2.5</sub> NAAQS on December 12, 2016 (81 FR 89391).<sup>3</sup> Under section 110(c)(1)(B), these disapprovals started a two-year clock for the EPA to promulgate a FIP to address the deficiency.

In order to fully address the requirements of section 128, and thus the requirements of section 110(a)(2)(E)(ii), Mississippi made the June 23, 2017, and February 2, 2018, SIP submissions to revise the existing federally approved SIP and include these necessary revisions. Through this action, EPA is proposing approval of Mississippi's draft SIP revisions to incorporate into its SIP state law and regulatory provisions to meet certain state board requirements of section 128. More detail on how Mississippi's SIP revisions meet these requirements is provided below. As a result of the addition of these new SIP provisions to meet the requirements of section 128, EPA is also proposing to approve the section 110(a)(2)(E)(ii) infrastructure element for the 2008 8-hour Ozone, 2008 Lead, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 1997, 2006 and 2012 PM<sub>2.5</sub> NAAQS. The approvals proposed herein would fully address the SIP deficiencies from EPA's prior disapprovals for the 2008 8-hour Ozone, 2008 Lead, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 1997, 2006 and 2012 PM<sub>2.5</sub> NAAQS. Thus, if we finalize this proposed approval, this will resolve the prior disapprovals for element 110(a)(2)(E)(ii) for the 2008 8-hour Ozone,

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<sup>3</sup> EPA has already approved or will consider in separate actions all other elements of Mississippi's infrastructure SIP submissions related to the 2008 8-hour Ozone, 2008 Lead, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 1997, 2006 and 2012 PM<sub>2.5</sub> NAAQS.

2008 Lead, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 1997, 2006 and 2012 PM<sub>2.5</sub> NAAQS, and terminate EPA's FIP obligation.

A brief background regarding the NAAQS relevant to this action is provided below. For comprehensive information on these NAAQS, please refer to the Federal Register rulemakings cited below.

*A. 2008 8-hour Ozone NAAQS*

On March 27, 2008, EPA promulgated a revised NAAQS for ozone based on 8-hour average concentrations. EPA revised the level of the 8-hour ozone NAAQS to 0.075 parts per million. *See* 77 FR 16436. States were required to submit infrastructure SIP submissions for the 2008 8-hour Ozone NAAQS to EPA no later than March 2011.

*B. 2008 Lead NAAQS*

On November 12, 2008 (75 FR 81126), EPA issued a final rule to revise the Lead NAAQS. The Lead NAAQS was revised to 0.15 micrograms per cubic meter (µg/m<sup>3</sup>). States were required to submit infrastructure SIP submissions to EPA no later than October 15, 2011, for the 2008 Lead NAAQS.

*C. 2010 NO<sub>2</sub> NAAQS*

On February 9, 2010 (75 FR 6474), EPA established a new 1-hour primary NAAQS for NO<sub>2</sub> at a level of 100 parts per billion (ppb), based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. States were required to submit infrastructure SIP submissions for the 2010 NO<sub>2</sub> NAAQS to EPA no later than January 2013.

*D. 2010 SO<sub>2</sub> NAAQS*

On June 2, 2010 (75 FR 35520), EPA promulgated a revised primary SO<sub>2</sub> NAAQS to an hourly standard of 75 ppb based on a 3-year average of the annual 99<sup>th</sup> percentile of 1-hour daily maximum concentrations. States were required to submit such SIPs for the 2010 1-hour SO<sub>2</sub> NAAQS to EPA no later than June 2, 2013.

*E. 1997 and 2006 PM<sub>2.5</sub> NAAQS*

On July 18, 1997 (62 FR 36852), EPA established an annual PM<sub>2.5</sub> NAAQS at 15.0 µg/m<sup>3</sup> based on a 3-year average of annual mean PM<sub>2.5</sub> concentrations. At that time, EPA also established a 24-hour NAAQS of 65 µg/m<sup>3</sup>. *See* 40 CFR 50.7. On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual PM<sub>2.5</sub> NAAQS at 15.0 µg/m<sup>3</sup> based on a 3-year average of annual mean PM<sub>2.5</sub> concentrations, and promulgated a new 24-hour NAAQS of 35 µg/m<sup>3</sup> based on a 3-year average of the 98th percentile of 24-hour concentrations. States were required to submit such SIPs to EPA no later than July 2000 for the 1997 annual PM<sub>2.5</sub> NAAQS, and no later than October 2009 for the 2006 24-hour PM<sub>2.5</sub> NAAQS.

*F. 2012 PM<sub>2.5</sub> NAAQS*

On December 14, 2012, EPA revised the primary annual PM<sub>2.5</sub> NAAQS to 12.0 µg/m<sup>3</sup>. *See* 78 FR 3086 (January 15, 2013). An area meets the standard if the three-year average of its annual average PM<sub>2.5</sub> concentration (at each monitoring site in the area) is less than or equal to 12.0 µg/m<sup>3</sup>. States were required to submit infrastructure SIP submissions for the 2012 PM<sub>2.5</sub> NAAQS to EPA no later than December 14, 2015.



### **III. What is EPA’s Analysis of How Mississippi Addressed the Requirements of Section 128(a)(1)?**

On June 23, 2017, and February 2, 2018, Mississippi submitted for parallel processing, draft SIP submissions to revise the Mississippi SIP to meet certain portions of the state board requirements of CAA section 128. Of note, EPA has previously approved SIP revisions to address all elements of section 128 for Mississippi except the significant portion of income requirement of 128(a)(1). *See* 78 FR 20793. The draft submissions under review in this proposed action primarily address this outstanding significant portion of income requirement, but also include additional supplemental language relevant to other elements of section 128.<sup>4</sup>

If a state has a board or body that approves CAA permits or enforcement orders, it is subject to section 128(a)(1), which requires that any state “board or body which approves permits or enforcement orders under [the CAA] shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement under [the CAA].” Section 128(a)(2) applies to the members of any such board or body that approves CAA permits and enforcement orders, and also to the head of an executive agency with similar powers, and requires that “any potential conflicts of interest . . . be adequately disclosed.”

In 1978, EPA issued guidance recommending potential ways that states might elect to meet the requirements of section 128, including suggested interpretations of key terms.<sup>5</sup> In this guidance, EPA recognized that states may have a variety of procedures and special concerns that

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<sup>4</sup> EPA has fully approved revisions to the Mississippi SIP to address all elements of Section 128, except the significant portion of income requirement. Thus, these additional provisions supplement Mississippi’s already approved SIP for these other elements of section 128, as described below.

<sup>5</sup> Memorandum from David O. Bickart, Deputy General Counsel, to Regional Air Directors, Guidance to States for Meeting Conflict of Interest Requirements of Section 128 (March 2, 1978).

may warrant differing approaches to implementation of section 128 and that the guidance does not create a requirement that all SIPs must include the suggested definitions verbatim, or that definitions per se must be included in SIPs. EPA provided further guidance with respect to these statutory requirements in its 2013 infrastructure SIP guidance.<sup>6</sup> In the 2013 guidance, EPA clarified that provisions to implement section 128 need to be contained within the SIP. Therefore, EPA will not approve an infrastructure SIP submission that only provides a narrative description or references existing state laws or requirements that are not approved into the SIP in order to address section 128. EPA has also provided certain interpretations of the statutory requirements of section 128 in its actions on infrastructure SIP submissions from various states, based on the facts and circumstances of those actions.<sup>7</sup> In several actions, EPA has approved state law requirements that closely track or mirror the explicit statutory language of section 128.<sup>8</sup>

The legislative history of the 1977 amendments to the CAA also indicates that states have some flexibility in determining the specific requirements needed to meet the section 128 requirements, so long as the statutory requirements are met.<sup>9</sup> Also, section 128 explicitly provides that states may adopt any requirements respecting conflicts of interest for such boards or bodies or heads of executive agencies, or any other entities which are more stringent than the

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<sup>6</sup> “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),” Memorandum from Stephen D. Page, September 13, 2013.

<sup>7</sup> *Id.*, pp. 43-44.

<sup>8</sup> *See*, EPA proposed rule on Montana’s SIP/infrastructure requirements, 81 FR 4225, 4233, finalized at 81 FR 23180; and EPA’s approval of Georgia’s infrastructure requirements, 77 FR 65125; proposed at 77 FR 35909.

<sup>9</sup> Specifically, the conference committee for the 1977 amendments stated that “it is the responsibility of each state to determine the specific requirements to meet the general requirements of [section 128].” H.R. Rep. 95-564 (1977), reprinted in *Legislative History of the Clean Air Act Amendments of 1977*, 526-527 (1978).

requirements of paragraphs (1) and (2), and that the Administrator shall approve any such more stringent requirements submitted as part of an implementation plan.

On June 23, 2017, Mississippi submitted for incorporation into its SIP changes to Mississippi Code section 49-2-5. This provision specifically addresses the Mississippi Commission on Environmental Quality, which has CAA enforcement order approval authority. This change adds a provision which provides that: “At least a majority of the members of the commission shall represent the public interest and shall not derive any significant portion of their income from persons subject to permits under the Federal Clean Air Act or enforcement order under the Federal Clean Air Act. In the event of any potential conflict of interest by a member of the commission, such member shall disclose the potential conflict to the other members of the commission and shall recuse himself or herself from participating in or voting on any matter related to such conflict of interest.” EPA notes that this provision addresses certain section 128 requirements for which Mississippi’s SIP has already received full approval; namely the representation of the public interest requirement of section 128(a)(1) and the conflict of interest disclosure requirements of section 128(a)(2). As explained below, EPA believes these additional provisions are approvable as well.

On February 2, 2018, MDEQ submitted for incorporation into the SIP provisions that address section 128(a)(1) for the MDEQ Permit Board. First, the submissions requests incorporation of a new provision in Appendix C-26, “Air Emissions Regulations for the Prevention , Abatement, and Control of Air Contaminants” Title 11, Part 2, Chapter 1, Rule 1.1, which provides that “the Mississippi Environmental Quality Permit Board (“Permit Board”) shall ensure that at least a majority of the members of the Permit Board shall represent the public

interest and shall not derive any significant portion of their income from persons subject to permits under the Federal Clean Air Act or enforcement orders under the Federal Clean Air Act.”

Second, the submission requests incorporation of revisions to the MDEQ Permit Board procedural rules at Appendix A-13, “Regulations Regarding Administrative Procedures Pursuant to the Mississippi Administrative Procedures Act”, Title 11, Part 1 Chapter 5, Rule 5.1. This rule describes the composition of the MDEQ Permit Board as seven members who serve by virtue of Mississippi State Office as “Ex Officio Members,” (eg., Chief of the Bureau of Environmental Health of the State Board of Health). Each Ex Officio Member is allowed to designate a replacement. Two Board members are appointed by the Governor of Mississippi and are required to be a retired professional engineer\_knowledgeable in the engineering of water wells and a retired water well contractor, respectively, but these members only vote on matters pertaining to the Office of Land and Water Resources. Administrative Procedures Act Rules, Title 11, Part 1 Chapter 5, Rule 5.1 provides that “at least the majority of the Ex Officio Members of the MDEQ Permit Board shall represent the public interest and shall not derive any significant portion of their income from persons subject to permits under the Federal Clean Air Act or enforcement orders under the Federal Clean Air Act (CAA).” It also provides for annual certification as to whether the member derives a significant portion of income from persons subject to permits or enforcement orders under the CAA and a process for replacing members as needed to ensure that a majority does derive a significant portion of income from regulated entities.

EPA is proposing to approve Mississippi’s June 23, 2017, and February 2, 2018, draft SIP submissions as meeting the public interest and significant portion of income requirements of section 128 because we believe these provisions comply with the statutory requirements and are

consistent with EPA’s guidance. The State has submitted a statutory provision for incorporation into the Mississippi SIP for the Mississippi Commission on Environmental Quality and this provision mirrors section 128(a)(1) regarding the majority composition public interest and significant income requirements. As noted above, EPA has determined that state requirements that closely track or mirror the section 128 requirements satisfy CAA requirements. The provision also requires disclosure of potential conflicts of interest and recusal if such a conflict exists. EPA previously incorporated Mississippi Code Section 25-4-27 into Mississippi’s SIP, which required the Commission and Board members to file annual statements of economic interests with the Mississippi Ethics Commission, and 25-4-27, which prescribed the contents for economic interest statements. *See* 78 FR 20793. In this previous approval action, EPA found that the state satisfied the disclosure requirements of section 128(a)(2). EPA views this additional disclosure requirement, which mirrors the language of section 128(a)(2), as approvable. Regarding recusal when a conflict exists, EPA notes that this step is not required under section 128. As section 128 explicitly provides that EPA “shall approve . . . more stringent requirements submitted as part of an implementation plan,” and EPA views the recusal requirement as more stringent than the section 128 requirements, EPA is proposing to approve this provision.<sup>10</sup>

For the MDEQ Permit Board, the state submitted regulations at Title 11, Part 1 Chapter 5, Rule 5.1 and Title 11, Part 2, Chapter 1, Rule 1.1 for incorporation into the SIP, which again mirrors section 128(a)(1) regarding the public interest and significant income requirements and therefore satisfy CAA section 128. In Title 11, Part 1 Chapter 5, Rule 5.1, Mississippi is also

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<sup>10</sup> *See* EPA’s proposed rule on a Montana SIP revision to address section 128 and infrastructure SIP requirements for a discussion on EPA’s approach to this type of recusal requirement. 81 FR 4225, 4233.

including certain procedural provisions that address implementation of the significant income requirement of section 128(a)(1) and provisions that describe the composition of the MDEQ Permit Board. EPA believes these provisions are not inconsistent with the section 128 requirements and associated guidance and are therefore approvable.

With the incorporation of these specific statutory and regulatory provisions to comply with the relevant CAA requirements into the SIP, EPA believes that Mississippi will meet all the requirements of section 128 of the CAA.

#### **IV. What is EPA's Analysis of How Mississippi Addressed the Requirements of Section 110(a)(2)(E)(ii)?**

Mississippi also requested in the draft SIP submissions that EPA convert the previous partial disapproval of its infrastructure SIPs with regard to the significant portion of income board requirements to full approvals. Section 110(a)(2)(E)(ii) of the CAA requires states to have SIP provisions that comply with the requirements of CAA section 128. Because EPA is proposing to approve provisions into Mississippi's SIP to meet the significant portion of income requirements of section 128(a)(1) as discussed above, it is also proposing to fully approve the SIP submission with respect to the related requirements of section 110(a)(2)(E)(ii) for the NAAQS previously mentioned. EPA notes that section 128 is not NAAQS-specific, and thus once a state has met the requirements of section 128 it will continue to do so for purposes of future NAAQS, unless there were future changes to the approved SIP provisions which would require further evaluation.

#### **V. Incorporation by Reference**

In this notice, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is

proposing to incorporate by reference Mississippi Code section 49-2-5 to include certain section 128 requirements for the MDEQ Commission on Environmental Quality; and Appendix C-26, “Air Emissions Regulations for the Prevention , Abatement, and Control of Air Contaminants” Title 11, Part 2, Chapter 1, Rule 1.1, and Appendix A-13, “Regulations Regarding Administrative Procedures Pursuant to the Mississippi Administrative Procedures Act”, Title 11, Part 1 Chapter 5, Rule 5.1 to incorporate certain section 128 requirements for the MDEQ Permit Board. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 4 office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

## **VI. Proposed Action**

As described above, EPA is proposing to approve that the Mississippi SIP meets the significant portion of income requirements of 128(a)(1) of the CAA. EPA is also proposing to conclude that, if Mississippi’s June 23, 2017, and February 2, 2018, SIP revisions are approved, the section 110(a)(2)(E)(ii) requirements are met for the 2008 8-hour Ozone, 2008 Lead, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 1997, 2006 and 2012 PM<sub>2.5</sub>, NAAQS for section 110(a)(2)(E)(ii).

Consequently, if EPA finalizes approval of this action, the deficiencies identified in the previous partial disapprovals of Mississippi infrastructure SIP submissions related to the state board requirements for the 2008 8-hour Ozone, 2008 Lead, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 1997, 2006 and 2012 PM<sub>2.5</sub>NAAQS will be cured. Finally, EPA is proposing to approve the new supplemental provisions regarding representation of the public interest of section 128(a)(1) for the MDEQ Permit Board and Mississippi Commission on Environmental Quality, and disclosure of potential conflicts of interest of section 128(a)(2) for the Mississippi Commission on Environmental Quality.

## **VII. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);



- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

## **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: March 15, 2018.

Onis “Trey” Glenn, III

Regional Administrator,  
Region 4.

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